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Missile Officer's Defense Faults Air Force Method On Pre-Trial Hearings

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F. Lee Bailey, the prominent defense attorney who has taken the case of the Air Force nuclear missile officer charged with making unauthorized visits to the Soviet Embassy, accused the Air Force yesterday of conducting secret pre-trial hearings from which defense stenographers were banned.

Bailey, who has joined two military lawyers defending 2nd Lt. Christopher M. Cooke, a deputy commander in a Titan silo in Kansas, arrived at Andrews Air Force Base yesterday and objected to the ground rules for the investigative hearing under way there.

Bailey told reporters outside the hearing room that records were not being kept of the military proceeding and that his request to bring in a court reporter to transcribe it had been denied.

An Air Force official, Lt. Col. Richard Cline, responded to Bailey's charge by saying, "Records are kept. The summarized substance of the witness's testimony is prepared by the investigating officer and is included in his report. This is in accordance with appropriate Air Force regulations."

Cline said Bailey and his client "will be afforded access to the report" of the hearing officer. Yesterday's proceeding has been described as the equivalent of a civilian grand jury investigation in which a hearing officer closets himself with the defendant, his attorneys and witnesses who are called to testify.

The report of this hearing will be turned over to senior military justice officials who will determine whether Cooke will face a military trial.

The missile officer from Richmond, Va., was charged in May with making

three visits to the embassy starting last December. On Thursday, the Air Force filed 10 additional charges against Cooke for 10 additional contacts he made with Soviet officials in this country since last June.

Moreover, the Strategic Air Command revealed yesterday that Cooke made the first of his 13 contacts with the Soviets during his first month of duty in the missile command but before he joined the missile crew.

A clear motive explaining why a 25-year-old deputy commander of a Titan missile in Kansas would seek out a relationship with the Soviets has not emerged from the puzzling account provided by military and family sources. This account suggests that Cooke sought a career with the CIA and hoped to use some of the Titan's secrets in a freelance effort to trade information with Soviet officials.

But the most controversial aspect of the case has been the premature grant of immunity from prosecution promised to Cooke by Air Force investigators eager to determine precisely what secrets he allegedly gave away during his discussions with Soviet officials.

That grant of immunity caused Justice Department officials to reject consideration of espionage charges initially. The strongest evidence that Cooke gave information to the Soviets comes from his own statements to Air Force investigators after immunity was promised, sources have said.

The Justice Department agreed to reconsider espionage charges after Defense Secretary Caspar W. Weinberger made a personal appeal to Attorney General William French Smith.

Meanwhile, the Air Force says it will proceed with its own case.